

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 291 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

HAMIRBHAI TABHABHAI

Appearance:

Mr.R.V. Desai, ASSTT GOVERNMENT PLEADER for Petitioner
MR MV PATEL for Respondent No. 1

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 19/06/2001

ORAL JUDGEMENT

Rule. Mr.M.V. Patel, learned advocate for the
respondent waives service of the rule.

2. The present petition is filed by the State of
Gujarat through the deputy Executive Engineer, Roads &

Buildings Department, Sub Division, Surendranagar, challenging the award passed by the Labour Court, Surendranagar in Reference (LCS) No.65 of 1991 dated 14.7.2000.

3. Mr.R.V. Desai, learned Assistant Govt. Pleader submitted that this award is required to be quashed and set aside on the short ground that the award is passed in a reference which was originally made in the year 1986, and was dismissed for not producing the statement of claim on 9.12.1987. Thereafter Misc. Application No.16 of 1989 was filed on which an order was passed to take the reference on Board and then the respondent workman filed his statement of claim on 23.8.1991. Mr.Desai, learned AGP also pointed out that the case of the respondent workman is that his services were terminated on 1.11.1984 for which a reference was made in the year 1986 and in view of the circumstances narrated hereinabove it was only on 23.8.1991 that the respondent workman filed his statement of claim.

4. Mr.Desai, learned AGP relied upon a judgement of the Apex Court in the matter of K.P. Madhavankutty and others v. K.P. Madhavankutty and others, reported in 2000 (1) Scale page 306, wherein the Apex Court was considering the maintainability of a reference which was made after lapse of about 7 years of the dismissal of the respondent from the service. The Apex Court held that such a reference is not maintainable. The facts of the case were that the respondent workman serving as Clerk with the appellant Bank admitted his guilt about misappropriation and prayed for mercy. However, respondent no.1 was dismissed from service in the year 1972, against which an appeal to the Board of Directors of the bank was filed. The respondent workman admitted to have committed misappropriation and expressed unconditional regret. However, the appeal was dismissed. The respondent workman was paid the benefits due to him. Thereafter, an application was filed under sec.10 after a period of 7 years alleging that two other employees who were dismissed, were later reinstated. It is under these circumstances that the Apex Court said that a reference made after lapse of about 7 years of the order dismissing the respondent workman is not maintainable. In the present case also the facts to the effect that the services of the respondent workman were terminated on 1.11.1984 and the reference was made in the year 1986, which was numbered as Reference (LCR) No.308 of 1986 at Rajkot. The same was dismissed as the statement of claim was not filed. It is thereafter, that on a filing of a Misc. Application, the reference was restored and

present number was given.

5. The second important point which is required to be considered is that the learned Labour Judge has based its award on the fact that the respondent workman has put in 8 years of continuous service and in each year he has put in more than 240 days of work. This finding which is recorded in latter part of para 8 (page 15 of the petition) is running contrary to the contents of para 8 (former part) of the said award. In para 8 of the award the learned Judge has recorded that at exh.25, the deposition of witness of the present petitioner, namely, Keshavjibhai Parshottambhai Padalia was recorded, who has deposed to the effect that, "he is working as Additional Chitnis and he is executing repairing work of the section under his control. He was on the post for the last four years (at the time of deposition)." He brought the original muster roll to the Court and deposed from that muster roll, "that in 1980, the respondent workman had not worked for a day." However, he worked in subsequent years for the days as mentioned hereunder:

Year	No. of days worked
1981	176
1982	155
1983	169
1984	130

Lastly, in 1984 the respondent workman had put in 130 days. The deposition then proceeded to clarify that, "some of the days which are mentioned in the written statement are not correct in light of the facts borne from the original muster roll." The learned Judge has not discussed anything about this in his award and has recorded a finding in para 15 of the award that, "it is proved beyond doubt that the respondent workman has put in 8 years of continuous service and in each year he has put in more than 240 days." In view of the fact that the finding recorded by the Labour Court about the working of the respondent workman for 240 days, is not borne out from the record. In view of that the present award which is based on the fact that the respondent workman has put in more than 240 days of work, and hence he is entitled for protection and benefits under various provisions of Labour law, is required to be quashed and set aside.

6. Accordingly, the judgement and award dated 14.7.2000 passed by the learned Presiding Officer, Labour Court, Surendranagar, in Reference (LCS) No.65 of 1991 is hereby quashed and set aside. Rule is made absolute with

no order as to costs.

(Ravi R. Tripathi, J.)

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